

The Industrial Accidents Division asks the Utah Labor Commission to review Administrative Law Judge La Jeunesse's order vacating the noncompliance penalty imposed by the Division against Holmes Farms LLC pursuant to §34A-2-211 of the Utah Workers' Compensation Act.

The Labor Commission exercises jurisdiction over this motion for review under authority of Utah Code Annotated §63-46b-12 and §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

On October 21, 2005, the Division assessed a penalty of \$22,803.98 against Holmes Farms LLC ("Holmes") for failure to maintain workers' compensation insurance. On October 25, 2005, Holmes appealed the penalty. In light of Holmes' appeal, the matter was transferred to the Commission's Adjudication Division for a formal evidentiary hearing. The case was initially assigned to Judge George, but later reassigned to Judge La Jeunesse. The hearing was set for March 22, 2006.

In the meantime, it appears the Division and Holmes negotiated a reduced penalty. The Division issued an "amended determination" on December 13, 2005, reducing Holmes' penalty to \$10,863.13.

On March 20, 2006, three months after the Division issued its amended determination, but only two days before the scheduled hearing, the Division submitted a "notice of settlement" to Judge La Jeunesse. This notice stated that Holmes had agreed to pay the penalty at issue and that "the penalty appeal may be dismissed." Holmes has never confirmed or ratified the Division's representation.

On March 22, 2006, the date set for hearing on Holmes' appeal, the Division appeared but Holmes did not. On April 3, 2006, Judge La Jeunesse issued his decision vacating the Division's entire penalty assessment against Holmes. It appears Judge La Jeunesse took this action to sanction the Division's inappropriate conduct in 1) purporting to withdraw Holmes' appeal and 2) leading Holmes into believing it did not have to appear at the March 22 hearing.

The Division now challenges Judge La Jeunesse's decision. The Division argues it acted within its discretion to settle its penalty dispute with Holmes, and Judge La Jeunesse lacked authority to vacate the Division's penalty assessment against Holmes.

DISCUSSION

The Commission notes a number of procedural missteps in this matter.

First, Holmes' original appeal of the Division's penalty assessment vested jurisdiction over this matter with the Adjudication Division. Any reduction in that penalty assessment should have been accomplished as part of this proceeding, and not by the Division issuing a new assessment.

Second, one party cannot withdraw another party's appeal. Because Holmes filed the appeal in this case, only Holmes could withdraw that appeal. Consequently, the Division's unilateral assertion that Judge La Jeunesse should dismiss Holmes' appeal could have no effect.

Third, the Division's notice of settlement is incorrect on its face. The notice states that Holmes "agreed to pay the penalty at issue in this matter." But the "penalty at issue in this matter" is the Division's original assessment of \$22,803.98. The Commission sees nothing in the record suggesting Holmes has agreed to pay that amount.

Fourth, if the parties reached some sort of an understanding in this matter during December 2005, as seems likely, it was improper for the Division to wait until two days before the hearing to inform Judge La Jeunesse. The Division's inaction prevented Judge La Jeunesse from giving that hearing slot to some other case that actually required a hearing.

The Commission shares Judge La Jeunesse's frustration with the Division's handling of this matter. The Division's errors have caused unnecessary confusion and delay. However, it is likely that the Division's inartful conduct resulted from misguided efforts to resolve this dispute as simply as possible. It is also likely that the Division and Holmes have, in fact, reached some sort of resolution. On balance, the Commission believes that vacating the Division's penalty assessment is too severe. The Commission therefore remands this matter to Judge La Jeunesse for further proceedings. The parties will either submit a properly executed settlement agreement or proceed to a formal evidentiary hearing.

ORDER

The Commission sets aside Judge La Jeunesse's decision of April 12, 2006, and remands this matter to Judge La Jeunesse for further proceedings consistent with this decision. It is so ordered.

Dated this 15th day of May, 2006.

R. Lee Ellertson
Utah Labor Commissioner